IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9167 OF 2005

Hind Plastics ... Petitioner

V/s

Amir Shaikh ... Respondent

Mr. Rahul L. Nerlekar for the petitioner.

CORAM: P.V. KAKADE, J.

DATED: 16TH JANUARY, 2006

P.C.:

1. Heard learned counsel for the petitioner.

2. The petitioner by this petition has challenged the order passed by the Presiding Officer, Labour Court, Mumbai, dated 30.9.2004 allowing the reference and directing the petitioner employer to reinstatement second party workman with continuity of service and full back wages w.e.f. 20.4.1994 and further to pay the cost of the litigation at the rate of Rs.2000/-.

3. The first and foremost issue raised on behalf of the petitioner herein is with regard to the status of the

respondent workman on the ground that he was working in supervisory capacity and, therefore, he is not a workman within the meaning of Sec. 2(s) of the I.D. Act.

In this regard it must be noted that the respondent herein was working as a Machine Maintenance Supervisor with the Company and his last drawn salary was Rs.2,500/-. On 20.4.1994 when he reported for duty as usual, he was not allowed to resume his duties and his services were terminated from that day without following mandatory provisions of law. Therefore, being aggrieved by this action of the employer, the respondent workman issued demand letter for his reinstatement with full back wages and approached the Govt. Labour Officer. The management remained absent in the conciliation proceeding. The Conciliation Officer submitted the failure report and hence the second party workman prayed for reinstatement with full back wages and continuity of service w.e.f. 20.4.1994.

The company filed written statement inter-alia denying the fact that the workman in fact was not a workman within the meaning of definition of a workman under Sec. 2(s) of the I.D.Act and, therefore, he has no locus-standi to raise the dispute under the said Act.

It was specifically contended that the second party workman was discharging duties of administrative and supervisory in nature and, therefore, sought dismissal of the complaint.

4. In view of the rival contentions, the reference Court, raised issue and came to the conclusion that the second party had proved that he was governed by the definition of "workman" as defined under Sec. 2(s) of the I.D.Act and, therefore, he had locus-standi to file the reference.

It was also held that the second party did not resign from service voluntarily on 26.3.2004 but his services were illegaly terminated w.e.f. 20.4.1994 and, therefore, the second party workman was entitled to the relief of back wages w.e.f. 20.4.1994 and the impugned order came to be passed in the present petition.

5. In the course of his argument, the learned counsel for the petitioner brought to my notice one admission given by the workman to the effect that he was a supervisor. However, in my considered view, the stray admission would not determine the fate of the dispute. If we peruse the evidence of the witness examined on

behalf of the Company, he volunteers that every supervising work was done by the workman orally and there was no appointment letter of the workman in which he was designated as supervisor. Admittedly, there is also no documentary evidence to show that he was working in the capacity as a supervisor. It was also admitted that there was no documentary evidence to show the closure of the Company and payment of legal dues to second party workman. The reference Court has taken this aspect into account and has come to the conclusion that the Court has to principally see the main or substantial work for which the employee has been employed and engaged to do. Neither the designation of employee is decisive nor any incidental work that may be done or required to be done by such employee shall get him out of purview of the definition of workman and each case would depend on nature of duties predominantly or primarily performed by such employee and when such function was supervisory or not would have to be decided on facts keeping in mind correct principles. Therefore, applying this reasoning, it was held that the workman - the second party, has sufficient evidence on record to show that he was a workman.

The learned counsel for the petitioner relied on the

judgment of this Court in the case of **Northcote Nursing Home Pvt. Ltd. & anr. v/s Zarine H. Rahina (Dr.(Mrs.) 7 anr.,** wherein the learned Single Judge has observed that, in his opinion and on the general principles of civil law, it is for the party to lead evidence to prove the positive facts and it is not for the other side to prove the negative facts. In this connection there cannot be two opinions about the general principles. However, in this particular case, it is the Company who has come with the specific case that the second party is not a workman within the meaning of relevant law and, therefore, in my considered view, it is for the Company to prove that he is not a workman but was working in managerial or administrative capacity, in which Company has failed.

6. It was further urged that the Company is closed and, therefore, reinstatement is not possible. However, as noted earlier, the witness of the Company himself has admitted in his cross-examination that there is absolutely no evidence to show that there is closure of the Company and, therefore, this fact cannot be taken into account by this Court while adjudicating the writ petition. Similar is the case with regard to the payment of legal dues. Only a copy of voucher of

payment of Rs.2,135/- dated 23.4.1994 appears to be filed on record at Exh.A of this petition. However, again admittedly, no such document was brought on record to prove the said fact.

7. In the result, I do not see any merits in the petition and, therefore, the petition stands dismissed in limine.

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